

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:
	: Chapter 11
	:
ETOYS, INC., et al.,	: Case Nos. 01-0706 (MFW)
	: Through 01-0709 (MFW)
Debtors.	:
	:
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ROBERT K. ALBER, <i>Pro Se</i> ,	:
	:
Appellant,	:
	:
v.	: Civil Action No. 05-830 (KAJ),
	: procedurally consolidated with
TRAUB, BONACQUIST & FOX LLP,	: Civil Action No. 05-0831 (KAJ)
BARRY GOLD, MORRIS NICHOLS	:
ARSHT & TUNNELL LLP, and POST-	:
EFFECTIVE DATE COMMITTEE OF	:
EBC I, INC.,	:
	:
Appellees.	:
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**JOINDER OF APPELLEE TRAUB, BONACQUIST & FOX LLP
IN REQUEST BY APPELLEE/CROSS APPELLANT
MORRIS, NICHOLS, ARSHT & TUNNELL LLP FOR (I) STATUS
CONFERENCE TO CONSIDER ROBERT K. ALBER'S FAILURE
TO TIMELY FILE OPENING APPEAL BRIEF AND (II) STAY
OF DEADLINES FOR APPELLEES TO FILE THEIR BRIEFS**

Appellee Traub, Bonacquist & Fox LLP ("TB&F") hereby submits this joinder in support of the request (the "Request") by Appellee/Cross-Appellant Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") for (i) a status conference to consider the failure of Appellant Robert K. Alber ("Mr. Alber") to timely file his opening brief in connection with the above-captioned

appeal (the “Appeal”) and (ii) a stay of the deadlines for the “Appellees”¹ to file their respective answering briefs in connection with the Appeal and, in the case of Morris Nichols, a stay of the deadline for Morris Nichols to file its opening and reply briefs in connection with its procedurally consolidated cross-appeal, Civil Action No. 05-0831 (KAJ) (the “Cross-Appeal”). In further support of the Request, TB&F respectfully states as follows:

1. The relevant underlying facts and background in support of the Request are set forth in detail in the Request, and are incorporated herein by reference as if set forth at length herein.²

2. Although Mr. Alber’s opening appeal brief was due on October 4, 2006 in accordance with the Amended Consolidated Scheduling Order, Mr. Alber has yet to file his opening appeal brief with the Court, and TB&F has not received any opening brief from Mr. Alber. Mr. Alber has not contacted TB&F; nor, on information and belief, has Mr. Alber contacted any of the other Appellees to request their consent to an extension of time to file his opening appeal brief. This Court’s docket reflects no motion or request for an extension of time to file the opening brief having been filed by Mr. Alber.

3. Because all Appellees are required to file their respective answering briefs by October 18, 2006, Mr. Alber’s unexplained failure to file his opening appeal brief is prejudicial to both TB&F and the other Appellees. Mr. Alber’s delay may leave the Appellees with inadequate time in which to prepare and file their respective answering briefs. Indeed, it is possible that if Mr. Alber does not file his brief prior to October 18, 2006, TB&F and the other

¹ The Appellees are: Traub, Bonacquist & Fox LLP; Morris, Nichols; Barry Gold; the Post-Effective Date Committee of EBC I, Inc.; and the United States Trustee.


² Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Request.

Appellees may be forced to file their answering briefs without ever having the benefit of knowing which of the myriad issues raised by Mr. Alber he is pursuing on appeal and what arguments Appellees need to respond to.

4. TB&F therefore joins Morris Nichols in its requests that this Court convene a status conference to address the consequences of Mr. Alber's failure to file his opening appeal brief. More specifically, TB&F joins Morris Nichols in its request that this Court direct M. Alber to file and serve his opening appeal brief within seven (7) calendar days of the status conference and provide for the dismissal with prejudice of Mr. Alber's appeal in the event that he fails to timely and properly file his opening appeal brief by the extended filing deadline. Second, TB&F also joins Morris Nichols in its request that this Court stay the deadlines for TB&F and the other Appellees to file and serve their respective briefs until such time as the Court determines that Mr. Alber has timely and properly filed and served his opening appeal brief. Upon such determination, TB&F joins Morris Nichols in its request that briefing schedule be updated to provide it and the other Appellees with at least as much time as they would have had to submit their respective briefs as would have been the case had Mr. Alber complied with the Amended Consolidated Scheduling Order. Finally, TB&F joins in Morris Nichols' request that this Court grant such other and further relief as it deems just and proper.

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